IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Vinod Kumar. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 840/2006 against the order dated 20-6-2006 passed by the Special Judge, N.D.P.S. Act Cases, Chittorgarh, in Criminal Misc. Case No. 145/2006.

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Date of Order: November 07, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. S.S. Shaktawat, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 20-6-2006 passed by the Special Judge, NDPS Act Cases, Chittorgarh (for short, "the trial Court" hereinafter), whereby the application filed by the petitioner under Section 451 of the Code seeking release of the vehicle on interim custody, was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the order impugned.

The facts and circumstances giving rise to the instant petition are that on 16-4-2005, the police intercepted

truck No.MP-44J-0257. On checking the truck, it was found that Vinod Nayak, Ajay Jain and Sunil Porwal were occupying the said truck, which was found carrying 87 bags of poppy husk weighing 3395 kgs. The said truck was seized . A crime report for the offence under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act" hereinafter) was registered and the occupants of the truck were arrested.

The said truck is registered in the name of one Seema Bordia and petitioner Vijay Kumar claims himself to be power of attorney-holder of the registered owner of the truck namely Seema Bordia. An application was filed by the petitioner, being the power of attorney-holder of the registered owner of the vehicle, stating therein that the said truck was sold by its registered owner Seema Bordia to Ajay Kumar Sankhlecha on 15.12.2003, i.e. almost more than five months before the occurrence; however certain dues are outstanding from the purchaser Ajay Kumar Sankhlecha and, therefore, on the basis of being a registered owner, claimed the possession of the vehicle.

The power of attorney alleged to have been executed by the registered owner Seema Bordia in favour of the present petitioner on 9-6-2006, which is much after the date of sell of the vehicle by the registered owner in favour of Ajay Kumar

Sankhlecha. Admittedly, Seema Bordia sold the vehicle to Ajay Kumar Sankhlecha on 15-12-2003 and thereafter she has no right to regulate the said truck by executing the power of attorney in favour of the present petitioner.

Learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in Sunderbhai Ambalal Desai Vs. State of Gujarat etc., 2003 SCC (Cri.) 1943; and a decision of this Court in Bhanwar Lal Vs. State of Rajasthan, 2002 (2) R.Cr.D. 305 (Raj.).

Learned Public Prosecutor submits that admittedly Seema Bordia, whose power of attorney-holder is the present petitioner, seeks possession of the vehicle, which had been sold long back by her to Ajay Kumar Sankhlecha, at any rate much prior to the date of the occurrence. The said vehicle was found as a conveyance for transporting huge quantity of poppy husk, which is the commercial quantity, in contravention of the provisions of the Act and, therefore, liable for confiscation.

Sub-section (1) of Section 60 of the Act provides that whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium, poppy, coca plaint, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation. Sub-section (3) of Section 60 of the Act provides that any animal

or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

Thus, in the instant case, prima facie the vehicle was found transporting huge quantity of poppy husk in contravention of the provisions of the Act and as such it is liable to be confiscated unless the owner of the said vehicle, who according to the petitioner himself is Ajay Kumar Sankhlecha, establishes that the vehicle was so used without his knowledge or connivance. In the circumstances, therefore, the decisions relied on by the learned counsel for the petitioner are of no help.

At any rate, the petitioner, after having sold the vehicle to Ajay Kumar Sankhlecha, prima facie, is not entitled for the possession of the said vehicle.

In the circumstances, therefore, I do not find any merit in the instant criminal miscellaneous petition and it is dismissed.

(H.R. PANWAR), J.

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